

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA**

**04-AFC-1**

CALIF ENERGY COMMISSION

**APPLICATION FOR CERTIFICATION  
FOR THE SAN FRANCISCO  
ELECTRIC RELIABILITY PROJECT**

**JAN 20 2005**

**Docket No. 04-AFC-1**

RECEIVED IN DOCKETS

**ORDER DENYING  
MOTION TO TERMINATE  
PROCEEDING**

## **I. BACKGROUND**

On December 28, 2004, Intervenor Californians for Renewable Energy (CARE) filed a "Motion to Terminate" these proceedings. CARE later submitted (on January 5, 2005) an "Offer of Proof" in support of elements of this Motion.

CARE asserts that Applicant is not pursuing the Application for Certification (AFC) with due diligence. CARE asserts that: 1) the AFC is no longer complete because Applicant lacks site control; 2) Applicant has failed to meet the construction milestones contained in the Power Purchase Agreement (PPA) with the California Department of Water Resources (CDWR); and 3) Applicant has improperly expended public funds for Project development and combustion turbine storage costs.

Applicant opposes each element of CARE's Motion in a written response filed on January 11, 2005. Applicant contends that the AFC is not deficient, that the PPA remains in effect, and that the expenditures to date are legitimate development costs.

## **II. DISCUSSION**

Commission regulations section 1720.2 (20 Cal. Code Regs. §1720.2) allows the Commission to terminate a proceeding if an Applicant fails to pursue an AFC with due diligence. On November 5, 2004, Applicant informed Commission staff that the project schedule should be put "on hold" while "...the City [of San Francisco] evaluates an

alternative site identified in the AFC.” This communication also notes that “the City is currently meeting with the community and property owners to identify the steps to obtain site control.” In its response, Applicant notes that it expects to file additional information during the first quarter of 2005 (pp. 1-2). To date, Applicant has neither formally abandoned the site identified in the AFC nor proposed a new one.

Applicant’s action has resulted in a de facto suspension, the net result of which has been to create a hiatus in the project review process. Given the fact that suspensions for various reasons and for varying lengths of time are not unprecedented, we do not conclude that the present circumstances reflect a lack of due diligence on Applicant’s behalf.

Next, Intervenor’s characterization of the PPA’s terms overlooks the fact that the decision to terminate the PPA rests with CDWR. To our knowledge, CDWR has not elected to terminate the PPA. Thus, even assuming, as does CARE, that the status of the PPA is relevant to the issue of due diligence, nothing has occurred to alter its present applicability.

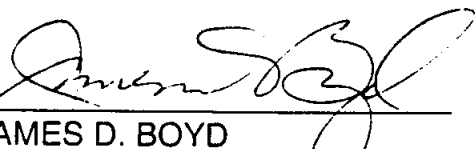
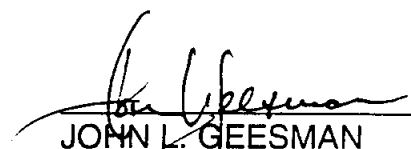
Finally, using pejorative terminology such as “fraudulent” (Motion, pp. 1, 5) and “intent to miss appropriate [sic]” (Offer of Proof, p.1), CARE asserts that Applicant is essentially misusing taxpayer and ratepayer funds for development of the proposed facility (Motion, p.5). The Energy Commission is not involved in the disbursement of these funds. We agree with Applicant that expenditure of development funds “...is a matter between the City, the Attorney General, California Consumer Power and Conservation Financing Authority (or its successor in interest) and DWR.” (Response, p. 4). This matter simply has no relevance to the due diligence determination in the present context.

### III. ORDER

We find the assertions contained in Intervenor's Motion to Terminate insufficient to provide a basis to terminate this proceeding. The Motion is therefore DENIED.

Dated: January 20, 2005

**ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

  
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JAMES D. BOYD  
Commissioner and Presiding Member  
San Francisco Electric Reliability Project  
AFC Committee  
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JOHN L. GEESMAN  
Commissioner and Associate Member  
San Francisco Electric Reliability Project  
AFC Committee